

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA

v.

ELIZABETH F. MARTINI, ESQ., et al.

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CIVIL ACTION
No. 00-2633

O'Neill, J.

June , 2000

MEMORANDUM

I.

Maximo Justo Guevara is an in forma pauperis plaintiff who has previously filed eighteen lawsuits in the Eastern District of Pennsylvania. By Memorandum and Order dated April 26, 2000, I dismissed all of Mr. Guevara's pending suits without prejudice and with leave to amend in order to consolidate all of his claims in a single suit. See Guevara v. Metropolitan Life Ins. Co., No. 99-2155, 2000 WL 502709 (E.D. Pa. Apr. 26, 2000) ("Guevara I"). At that time, I noted four independent grounds that likely would have justified the outright dismissal with prejudice of most, if not all, of Mr. Guevara's claims:

- 1) The complaints persistently and significantly failed to conform to Fed. R. Civ. P. 8(a). Id. at *2.;
- 2) The complaints were repetitive and therefore "frivolous or malicious" under the in forma pauperis statute, 28 U.S.C. § 1915(d). Id.;
- 3) The complaints likely were jurisdictionally deficient. Id. at *3-4.; and
- 4) Many of the claims likely were barred by res judicata. Id. at *4.

Despite these circumstances, I did not dismiss any of Mr. Guevara's claims with prejudice. Instead, I dismissed the suits without prejudice and with leave to amend in a single consolidated case. I also specifically reserved the option of later severing some of the claims for trial pursuant to Rule 42(b), if warranted. Id. at *2 n.4. Finally, I offered Mr. Guevara some "words of guidance" in hopes that he would "refine and narrow" his claims in his amended complaint. Id. Mr. Guevara did not file a consolidated amended complaint and instead appealed the April 26th Order. The appeal is currently pending.¹

Subsequently, Mr. Guevara filed this suit in state court. Defendants removed the case to this Court, and it was assigned to me as related to Mr. Guevara's other cases. Presently before me are various motions involving this case and the April 26th Order.

II.

As an initial matter, Mr. Guevara has moved for my recusal.²

The basis for his motion is Mr. Guevara's claim that his earlier lawsuits were "improperly arbitrarily dismissed without his motions investigated." See Plaintiff's Motion to Recuse at 2. He further claims that I have "a strong personal interest in the outcome of this case," but states no

¹ I note that a number of the defendants in Mr. Guevara's previous suits have asked that I dismiss those cases with prejudice since Mr. Guevara chose not to amend within the 20 days granted by the April 26th Order. I will defer that issue until the appeal is decided.

² There are two federal recusal statutes. 28 U.S.C. § 455 sets out the standards by which a judge should disqualify himself from a case. 28 U.S.C. § 144, on the other hand, provides a mechanism by which a second judge must consider the party's claim of bias. Mr. Guevara has not specifically cited either statute and has not sworn out an affidavit as is required by Section 144. I have therefore considered the recusal motion under Section 455. However, my denial of Mr. Guevara's Section 455 motion is made without prejudice as to any determination under Section 144 should Mr. Guevara choose to invoke that provision in a later motion.

factual basis for this claim. Id. Mr. Guevara has further referred to me as a “conspirator” and claims that I am “conceal[ing] criminal conduct.” Id. at 3 and 4.

The April 26th Order speaks for itself and it is not appropriate to discuss its merits here; that is now an issue for the Court of Appeals. Clearly, Mr. Guevara is inferring personal interest and criminal conduct on my part from the mere fact that I ruled against him; however, it is well established that adverse rulings do not support a finding of bias for the purposes of recusal. See United States v. Rosenberg, 806 F.2d 1169, 1174 (3d Cir. 1986). I must also be mindful of the policy against “judge shopping.” See United States v. Dalfonso, 707 F.2d 757, 761 (3d Cir. 1983). I therefore conclude that recusal is inappropriate.

II.

Plaintiff next objects to defendants’ removal of this case from state court. He argues that the notice of removal is “baseless, patently frivolous, constituted an abuse of process, was submitted solely to harass, cause unnecessary delay, and needlessly increase the cost of litigation.” See Plaintiff’s Objections to Defendants’ Notice of Removal ¶ 5. He does not, however, state the basis for any of these conclusory statements.

The Complaint makes claims under both federal and state law. This Court has original jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331, 1343, 1357 and 1367. Removal was therefore proper under 28 U.S.C. §§ 1441 and 1443.

III.

Plaintiff next moves to disqualify and disbar certain defendants and opposing counsel.

I have reviewed the thirty-six-page motion in an effort to determine the exact misconduct with which each attorney is accused. The only specific, non-conclusory claim that I can find is that one or more of the attorneys allegedly “fraudulently misrepresented” to this Court that “Merrill Lynch and Gerald Berg had been ‘excused,’ ‘remove’, [sic] and ‘no longer part of this action’ by the State Court.” See Plaintiff’s Motion to Disqualify/Disbar Counsel at 4, 5, 7, 10. However, no such representation has been made to me. All of the remaining claims of misconduct go to the merits of Mr. Guevara’s other lawsuits. In the April 26th Order, I noted “Mr. Guevara’s apparent belief that every response to his pleadings by an adverse party gives rise to a new cause of action and/or warrants sanctions against those attorneys.” Guevara I, 2000 WL 502709 at *2. I must therefore conclude that Mr. Guevara has simply “upped the ante” and now believes that a response to his pleadings justifies the disbarment of the attorney making the response. Plaintiff’s motion will therefore be denied.

IV.

Defendants have moved that plaintiff be ordered to show cause why he should not be enjoined from filing any additional complaints related to the events at issue in his previous lawsuits without prior leave of the Court.

Defendants correctly point out that a District Court may enjoin a plaintiff from filing new lawsuits in response to a “pattern of groundless and vexatious litigation.” See In re Oliver, 682 F.2d 443, 446 (3d Cir. 1982); Chipps v. United States District Court for the Middle District of Pennsylvania, 882 F.2d 72 (3d Cir. 1989). In the April 26th Order, I specifically contemplated taking such action if Mr. Guevara’s abusive practices continued. See Guevara I, 2000 WL

502709 at *3. However, Mr. Guevara has filed no new complaints in this Court since that time. Defendants' motion will therefore be denied without prejudice to its renewal if appropriate.

V.

Finally, defendants have moved to stay this action pending the outcome of Mr. Guevara's appeal of the April 26th Order. Defendants correctly point out that the claims in this action are substantially related to and/or are the same as the claims in Civil Action Nos. 99-2153, 99-2155, and 00-2047, three of the suits involved in the April 26th Order. Defendants should not have to defend simultaneously against these claims in the District Court and the Court of Appeals. Therefore, the motion to stay will be granted.

VI.

In conclusion, I note that in the April 26th Order I wrote the following:

In reading Mr. Guevara's filings one thing is clear; he obviously believes that he has been treated unfairly by many parties. I cannot tell at this point whether he has stated a cause of action, or, if so, whether a legal remedy is available to redress the alleged unfairness. However, I can assure Mr. Guevara that, like all parties before me, he will be treated fairly in these proceedings. I hope that he will help me reach that goal by taking the admonishments in this Memorandum seriously.

Guevara I, 2000 WL 502709 at *4.

I once again express the hope that Mr. Guevara will take my advice so that I need not consider sanctions.

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ORDER

AND NOW, this day of June, 2000, for the reasons stated in the accompanying Memorandum, it is hereby ORDERED that:

- 1) Plaintiff's motion for recusal is DENIED;
- 2) Plaintiff's objection to defendants' notice of removal is DENIED;
- 3) Plaintiff's motion for disqualification and disbarment is DENIED;
- 4) Defendant's motion for plaintiff to show cause why he should not be enjoined from filing further complaints is DENIED; and
- 5) Defendant's motion to stay these proceedings pending the outcome of plaintiff's appeal in Civil Action No. 99-2155 is GRANTED and this action is STAYED.

THOMAS N. O'NEILL, JR., J.